

January 13, 2004

James C. Morriss III
Thompson & Knight LLP
1900 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4081

RE: Gulfco Marine Maintenance Superfund Site in Freeport Texas

Dear Mr. Morriss:

This letter is in response to our telephone call on January 11, 2004, regarding the Gulfco Marine Maintenance Superfund Site ("Gulfco Site"). During the call you stated that the PRP Group would meet with the Environmental Protection Agency ("EPA") next Thursday, January 20, 2004 to discuss EPA's latest revisions to the draft administrative order on consent ("AOC") and that client/group would provide a mark up of EPA's draft Statement of Work ("SOW") on January 28, 2004.

As you know, EPA has been attempting to negotiate an AOC for a Remedial Investigation/Feasibility Study at the Gulfco Site with Dow, Sequa, and LDL Coastal (hereinafter referred to as "Potentially Responsible Parties [PRP] Group") since EPA's Special Notice Letter dated July 14, 2004. The Special Notice Letter invited the PRP Group to make a good faith offer within 67 days to conduct the RI/FS based on the draft AOC and SOW that EPA provided. On September 2, 2004, EPA met with the PRP Group to discuss the parameters of a good faith offer and the PRP Group's vision for the future use of the Site. At the meeting, EPA reiterated the requirement that the PRP Group make a good faith offer that included a commitment to do the RI/FS and provided a redline/strikeout of the AOC and the SOW EPA had enclosed with the Special Notice Letter.

On September 27, 2004, EPA received offers from your clients, Dow, Sequa, and LDL Coastal, which stated that the companies individually or collectively as a PRP Group were not prepared to commit to do the RI/FS. The Parties did not provide mark ups of EPA's draft AOC or SOW. EPA responded with a letter stating that the letters from Dow, Sequa, and LDL Coastal did not constitute good faith offers and that EPA would pursue other means to get a RI/FS conducted at the Gulfco Site.

After receiving EPA's letter, on October 14, 2004, the PRP Group sent a letter to the

Superfund Division Director asking for more time to negotiate the RI/FS, given that the PRP Group believed the Gulfco Site did not constitute an immediate threat to human health and the environment. The Superfund Division Director responded in a October 26, 2004 letter that the Gulfco Site presented a risk to the public health and the environment, and EPA could not delay cleanup activities at the site.

On October 29, 2004, the PRP Group sent a letter agreeing to conduct the RI/FS. This letter did not include mark ups of EPA's draft AOC and SOW. Subsequently, the PRP agreed to provide a mark up of EPA's draft AOC prior to a meeting scheduled for December 3, 2004, but declined to provide a mark up of EPA's draft SOW prior to the meeting. On November 22, 2004, EPA sent a letter confirming the December 3 meeting and requesting a redline/strikeout of the SOW prior to the meeting in order to facilitate timely resolution of the RI/FS negotiations.

EPA met with the PRP Group on December 3, 2004 to negotiate the AOC and SOW for the RI/FS. The PRP Group provided a redline/strikeout of the AOC to EPA prior to the meeting, the PRP Group failed to provide a mark-up of the draft SOW. The December 3 meeting consisted primarily of walking through the changes to the draft AOC proposed by the PRP Group. At the meeting, it became clear that the mark-up of the draft AOC that the PRP Group had provided did not include all of the changes that the PRP Group intended to propose to EPA. The PRP Group intended to propose additional revisions to the draft AOC at a later undetermined date. Also during the December 3 meeting, the PRP Group for the first time proposed doing a removal action at the Gulfco Site. EPA was open to the idea of doing a removal as long as it did not delay the negotiations to conduct the the RI/FS. The meeting concluded with EPA agreeing to review the oral and written comments and providing an edited version of the AOC to the PRP Group.

Through a December 17, 2004, telephone call and a December 20, 2004 letter, nearly two months after agreeing to perform an RI/FS at the Gulfco Site, the PRP Group informed EPA that it had met with the Texas Commission on Environmental Quality to discuss the possibility of deleting the Gulfco Site from the National Priorities List ("NPL") and placing it under the State Voluntary Cleanup Program.

On December 22, 2004, EPA sent a revised version of the AOC for the RI/FS to the PRP Group. EPA's transmittal letter stated that EPA believed that negotiations could be concluded by the end of January. EPA again requested that the PRP Group provide a mark up of EPA's draft SOW, this time by the middle of January.

A conference call meeting was subsequently scheduled for January 4, 2005 to discuss the revised draft AOC for the RI/FS. During the January 4, 2005, conference call, it became apparent that the PRP Group was unprepared to discuss the AOC for the RI/FS, preferring instead to discuss its desire to delete the Gulfco Site from the NPL or the possibility of conducting a removal action at the Site. EPA informed the PRP Group that the Gulfco Site could only be deleted from the NPL in accordance with the procedures outlined in the National Contingency Plan and that we would not be discussing a removal action until the negotiation of an AOC for the RI/FS had been completed. EPA made clear its concern that negotiations to conduct the RI/FS had not been productive and the the PRP Group did not appear to share EPA's

sense of urgency that a quick conclusion to the RI/FS negotiations be reached. EPA made it clear that it was committed to having the RI/FS conducted at the Site by liable parties. In response, the PRP Group offered to assign its contractors to begin looking at the SOW for the RI/FS and to review the revised AOC. The PRP Group, however, did not provide a date when the PRP could provide a redline/strikeout of the SOW or meet regarding the revised AOC.

On the January 11, 2005, attorney's call to discuss the Gulfco Site, I reiterated EPA's position that the RI/FS negotiations must be concluded prior to discussions for any removal action. You then agreed to a meeting on January 20, 2005, to discuss EPA's revised draft AOC and stated that the PRP Group would provide a mark-up of EPA's draft SOW on January 28, 2005.

EPA wants it to be clear to the PRP Group that EPA still expects the negotiation of the AOC, including the SOW, for the RI/FS be concluded by the end of January. It has been over six months since EPA's Special Notice Letter, including copies of the draft AOC and draft SOW was sent to the PRP Group. It has been over two months since the PRP Group agreed in writing to perform the RI/FS at the Gulfco Site. If these negotiations have not resulted in final, signable documents acceptable to EPA by January 31, 2005, EPA will consider pursuing conduct of the RI/FS by other means.

If you have any questions or comments, please contact me at (214) 665-2157.

Sincerely,

Barbara A. Nann
Assistant Regional Counsel

cc: Bill Mailey
Alan Daniels

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